

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Friday, January 14, 2022

Hearing Room 1675

9:00 AM

2:00-000000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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For more information on appearing before Judge Kwan by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Robert N. Kwan's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

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- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
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Docket 0

Tentative Ruling:

- NONE LISTED -

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2:13-14135 Art and Architecture Books of the 21st Century

Chapter 11

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

#1.00 CONT'D TRIAL RE: Application of Sam S. Leslie, plan agent, for issuance of order approving the issuance of writ of execution and appointment of plaintiff as substitute custodian for U.S. Marshal in furtherance of execution of writ and notice of levy; and for order approving sale of artworks free and clear of any claim of lien or interest fr. 12/2/21, 12/3/21, 12/10/21

Docket 713

Tentative Ruling:

Updated tentative ruling as of 1/14/22. The property whose ownership in dispute, the alleged Banksy artwork, is an unusual type of property, street art. The parties focus on general property law and landlord-tenant law, but have not addressed the specific unique characteristics of the property as perhaps a new category of property, street-art. See Salib, "The Law of Banksy: Who Owns Street Art?," 82 U. Chi. L. Rev. 2293 (2015); Carron, "Street Art: Is Copyright for 'Losers'? A Comparative Prospective on the French and American Legal Approach to Street Art," 91 N.Y. St. B.J. 34 (Nov. 2019). In order to determine the parties' ownership claims, the court expects to consider general legal principles regarding acquisition and ownership of property, such as California Civil Code Section 1000. See also, 13 Witkin, Summary of California Law, Personal Property, Section 28 (11th ed. 2021); 3 Miller and Starr California Real Estate, Section 9.2 (4th ed. 2021) (property as a "bundle of rights"); see also, 3 Miller and Starr California Real Estate 4th, Section 9.42 (tests for whether an item is a fixture). 400 South La Brea argues that it owns the Banksy as being on a fixture per the lease. The plan agent argues that Ace Museum had owned it subject to his judgment levy because it is a trade fixture or removed graffiti. Is the Banksy mere graffiti, or something more? These are some of the issues that the court is considering. Appearances are required on 1/14/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 1/6/22. No tentative ruling on the merits will be

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issued for trial. Appearances are required on 1/14/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. Regarding the issue of whether the court may enter a final judgment on the plan agent's claim to the Banksy artwork, the court agrees with the 400 South La Brea Defendants that the answer is no because the plan agent's claim is a noncore but otherwise related to the bankruptcy case subject to the restrictions of *Stern v. Marshall*, 564 U.S. 462 (2011). The plan agent's claim is based on California state law collection procedures to enforce the judgment entered by this court in this adversary proceeding against defendant Ace Museum through a judgment levy on property of the judgment debtor, Ace Museum, which is a nonbankruptcy debtor party, but legal title to the levied property is contested by third parties, the 400 South La Brea Defendants. Pursuant to California Code of Civil Procedure 720.170(d), the court will conduct a hearing to determine the third party claim of the 400 South La Brea Defendants to the property levied upon by the reorganized debtor as the judgment creditor of defendant Ace Museum. The dispute is whether the property belongs to Ace Museum subject to the reorganized debtor's judgment levy or to the 400 South La Brea Defendants, that is, the dispute is over ownership as to nonbankruptcy debtor parties. Thus, the court disagrees with the plan agent's characterization of his claim being a core proceeding over whether the property was part of the bankruptcy estate under 11 U.S.C. 541. Regardless whether the 400 South La Brea Defendants have asserted counterclaims in this adversary proceeding, this particular dispute involving the Banksy artwork is noncore because the action at issue does not "stem from the bankruptcy itself, nor would it necessarily be resolved in the claims allowance process." *Stern v. Marshall*, 564 U.S. at 499. Absent consent to the bankruptcy court's authority to enter a final judgment on the matter, which is not manifested here, the bankruptcy court may only proceed with hearing the dispute by issuing proposed findings of fact and conclusions of law for review and approval by the district court, which has the authority to enter a final judgment. *Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25, 35-37 (2014).

The court will discuss scheduling of the trial with the parties and conducting the trial remotely.

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Chapter 11

Appearances are required on 4/7/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Art and Architecture Books of the

Represented By
Thomas M Geher
David W. Meadows
Jerome S Cohen
Carolyn A Dye
Alan I Nahmias

Defendant(s):

Ace Gallery New York Corporation,

Represented By
Alan W Forsley

Douglas Christmas

Represented By
Alan W Forsley

Ace Gallery New York, Inc., a

Represented By
Alan W Forsley

ACE MUSEUM, a California

Represented By
Alan W Forsley

400 S La Brea, LLC a California

Represented By
Michael W Vivoli
Ronald Rus
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CONT... Art and Architecture Books of the 21st Century Chapter 11

Kamran Gharibian

Represented By
Brian L Davidoff

Daryoush Dayan

Represented By
Brian L Davidoff

Cathay Bank, a California

Represented By
Ekwan E Rhow
Elliot C Harvey Schatmeier

Jennifer Kellen

Represented By
Michael D Sobkowiak

Plaintiff(s):

THE OFFICIAL COMMITTEE OF

Represented By
Victor A Sahn
Daniel A Lev
David J Richardson
Asa S Hami
Jessica Vogel

Official Committee Of Unsecured

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Victor A Sahn

Sam Leslie

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David J Richardson
Jason Balitzer
Steven Thomas
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2:13-14135 Art and Architecture Books of the 21st Century

Chapter 11

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

#2.00 Cont'd hearing re: Plan agent's motion to limine to exclude the expert report submitted by
400 S. La Brea
fr. 8/18/21, 10/27/21

Docket 900

Tentative Ruling:

Updated tentative ruling as of 1/6/22. As the court orally stated at a prior trial session, the motion will be denied as the witness may give testimony on applicable industry standards. Appearances are required on 1/13/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/5/21. Somewhat agreeing with the 400 South La Brea Defendants' observation that the court's "gatekeeping" function is more relaxed in the context of a bench trial, as the court is both the "gatekeeper" and the trier of fact, and not a jury, the court is inclined to defer ruling on the motion in limine to exclude the witness's testimony until trial or at least until all the expert witnesses are designated and their reports are served since argument has been made that the witness's knowledge and experience in the field is a sufficient foundation for him to testify on industry standards, i.e., commercial/industrial real estate leasing. See 400 South La Brea Defendants' Opposition to Motion in Limine at 5-6 see also, *Kansas City Southern Railway Co. v. SNY Island Levee Drainage District*, 831 F.3d 892, 900 (7th Cir. 2016) ("Where a trial judge conducts a bench trial, the judge need not conduct a *Daubert* (or Rule 702) analysis before presentation of the evidence, even though he must determine admissibility at some point."); *Pacific Fuel Co., LLC v. Shell Oil Co.*, Case No. CV 06-0225 AG (AJWx), 2008 WL 11336467 (C.D. Cal. Jan. 24, 2008), citing and quoting *inter alia*, *Kona Technology Corp. v. Southern Pacific Transportation Co.*, 225 F.3d 595, 611 (5th Cir. 2000) ("[A] trial court's reliance on individuals experienced in a particular field for the purposes of obtaining explanation of the technical meaning of terms used in the industry is 'prudent.'"). Movant can renew the motion in limine at the start of trial, or interpose an objection to the testimony

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or make a motion to strike. Considering movant's reply, the court makes the further observation that although the testimony may be ultimately inadmissible, it may be useful and helpful to the court for it to be considered as further argument on behalf of the proponent. Appearances are required on 4/7/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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Douglas Christmas

Represented By
Jonathan Seligmann Shenson

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Art and Architecture Books of the 21st Century

Chapter 11

J. Bennett Friedman

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Chapter 11

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

#3.00 Cont'd hearing re: Plan Agent's motion in limine to exclude the testimony of Douglas Christmas
fr. 8/18/21, 10/27/21

Docket 937

Tentative Ruling:

Updated tentative ruling as of 1/6/22. As the court orally stated at a prior trial session, the motion will be denied as the witness may give testimony consistent with the court's prior order of 6/22/21 on the plan agent's motion to strike the testimony of the witness which permitted the 400 South La Brea parties to call the witness at trial if the witness's trial declaration was filed and the parties had the right and opportunity to take the witness's deposition before trial. The witness's trial declaration was filed, and neither party chose to take the witness's deposition before trial. Appearances are required on 1/13/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. Regarding the motion, it is unclear whether the plan agent has attempted to take discovery of the witness specifically regarding the Banksy artwork dispute as he says that the witness has generally invoked the Fifth Amendment privilege in discovery proceedings in this case (there is no evidence in the moving papers showing that the witness invoked the Fifth Amendment privilege as to specific questions regarding the Banksy dispute, and furthermore, it does not appear that the proper steps to take discovery of the witness have been taken regarding the Banksy dispute, such as the service of a deposition notice or a witness subpoena regarding the Banksy dispute--service of an email request on the witness's counsel may be appropriate professional courtesy, but not legally sufficient here to warrant granting relief on this record). Moreover, the cases cited by the plan agent that a party who refuses to participate in discovery in a civil action by generally invoking the Fifth Amendment privilege forfeits the right to introduce evidence in the litigation as to matters which he or she has refused to testify

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are not precisely on point as the witness is not offering evidence on this specific matter since he is being called as a witness by other parties, the 400 South La Brea Defendants, and not for himself. However, once the plan agent has taken the proper steps to take the witness's deposition and the witness has refused or evaded such attempts, it would be unfair and prejudicial to the plan agent to allow the witness to testify. If the witness is being called to testify at trial, a party should be able to take discovery of that witness's testimony through a deposition before trial. It seems to the court that since the witness is a party to the adversary proceeding, the plan agent can serve a notice of deposition rather than a subpoena to take the deposition, though probably, given the background and history of this litigation, the parameters of the deposition should be discussed in advance between the parties, the witness and his counsel, and the court. Appearances are required on 4/7/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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